(17)

Office - Supreme Court, U. S.
FILED
MAY 15 1944
CHARLES ELMORE CROPLEY
CLERK

No. 770

In the Supreme Court of the United States

October Term, 1943.

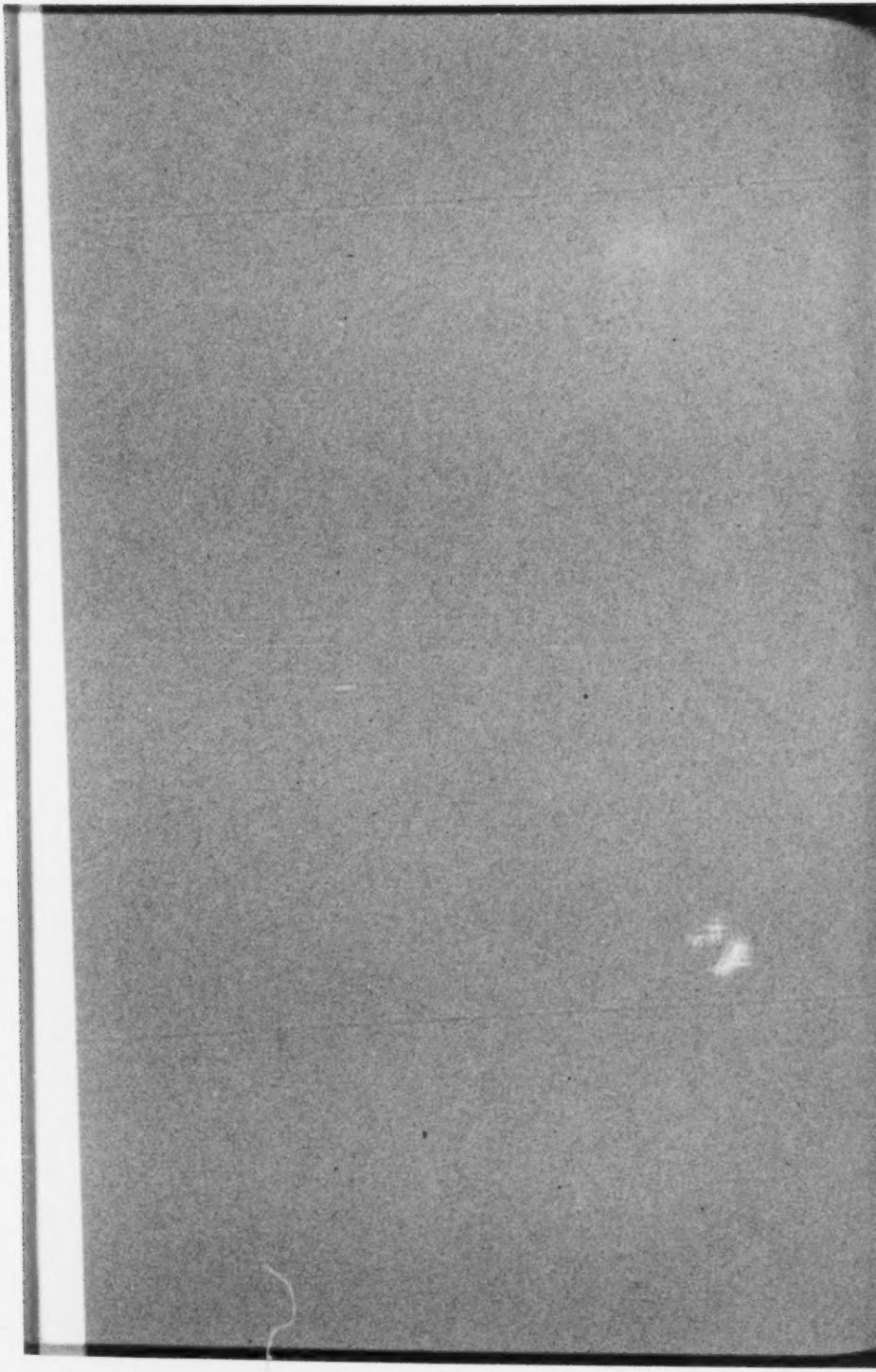
FANNIE E. WILLIAMS, *Petitioner,*

vs.

UNITED STATES OF AMERICA.

PETITION FOR REHEARING.

W. F. SEMPLE,
Tulsa, Oklahoma,
GEORGE H. JENNINGS,
Sapulpa, Oklahoma,
Counsel for Petitioner.



INDEX.

	PAGE
Petition for rehearing	1
Appendix A—Letter from Superintendent to Mr. Daniel Stratton, September 22, 1931	7
Appendix B—Dates and substance of letters by Superintendent relative to property purchased on Carney-Lacher forms of deeds	7
Appendix C—Letter of January 10, 1931, from Superintendent to Commissioner of Indian Affairs	10
Appendix D—Letter dated January 20, 1931, C. J. Rhoads, Commissioner, to Secretary of Interior	11
Appendix E—Letter dated March 18, 1931, Superintendent to Commissioner of Indian Affairs	11
Appendix F—Letter dated Mar. 30, 1931, C. J. Rhoads, Commissioner, to Secretary of Interior.	12
Appendix G—Order No. 1918 of the Secretary of Interior	13
Appendix H—Letter dated May 6, 1944, Secretary of Interior to Superintendent of the Five Civilized Tribes Agency	16

Table of Cases.

Blanset v. Carden, 256 U. S. 319, 326, 41 S. Ct. 519, 65 L. ed. 950	5
Board of County Commissioners of Creek County v. Seber, 318 U. S. 705, 63 S. Ct. 920, 87 L. ed. 807	4
United States v. Watashe, 102 F. (2d) 428	2

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1943.

No. 770

FANNIE E. WILLIAMS, *Petitioner,*

vs.

UNITED STATES OF AMERICA.

PETITION *for* REHEARING.

Your petitioner respectfully prays the Court to grant a rehearing in this cause and to reconsider the petition herein for a writ of *certiorari* to review the judgment of the United States Circuit Court of Appeals for the Tenth Circuit entered in the above cause on November 3, 1943; and in support hereof, petitioner hereby adopts the grounds and reasons for the issuance of the writ set forth in her petition herein, and in addition thereto, respectfully shows to the Court:

That the decision below, construing the provisions of Section 1 of the Act of Congress of May 10, 1928, 45 Stat. 495, is in conflict with the settled administrative construction of the provisions of such enactment; and in this connection, petitioner respectfully shows to the Court that the officers charged with the administration of the property and affairs of the Five Civilized Tribes, in construing such enactment, have consistently held that such Act of Congress

did not operate to extend the restrictions upon the class of property which forms the basis of this action.(1)

In support of this statement we call attention to the fact that on September 22, 1931, the Superintendent of the Five Civilized Tribes addressed a letter to Daniel Stratton, an attorney at law, of Neosho, Missouri, advising him that the restrictions upon the land which is involved in this case expired at the close of April 26, 1931, and that Mr. Bushyhead could dispose of such property without the consent of the Secretary of the Interior.(2)

In addition, the records in the custody of the Superintendent of the Five Civilized Tribes at Muskogee, Oklahoma, disclose that immediately prior to and following April 26, 1931, in many cases, individual Indians, in whose behalf property had been purchased on Carney-Lacher forms of deed, were induced to convey such property to their children, or other near relatives, upon a form of deed restraining alienation or encumbrance, without limitation as to time. These conveyances were submitted to and approved by the Secretary of the Interior for the purpose of continuing restrictions upon the land.

Typical of these cases is a conveyance made by Punskee Field, a full-blood Creek Indian, who, on January 8,

---

(1) This construction was consistently followed until the decision of the Circuit Court of Appeals for the Tenth Circuit in United States v. Watashe, 102 F. (2d) 428, decided May 13, 1939. The Department thereafter took the position that the court held in that case that the restrictions were extended by the Act of May 10, 1928.

(2) A certified copy of this letter is tendered to the Clerk herewith. It is also set forth in full as Appendix A, at page 7 hereof.

A casual search of 279 files in the Union Agency at Muskogee, Oklahoma, by counsel for petitioner, disclosed 16 additional letters to the same effect, in substance, written by the Superintendent of the Five Civilized Tribes. These letters are not set forth in full, but a list showing the date and the substance of such letters is set forth as Appendix B, at pages 7, 8 and 9 hereof.

1931, in consideration of one dollar and love and affection, conveyed lands, which had been purchased in his behalf on a Carney-Lacher form of deed, to his wife, Louisa Field, who was also a full-blood Creek Indian. This deed was transmitted to the Commissioner of Indian Affairs on January 10, 1931, by the Superintendent of the Five Civilized Tribes with recommendations that it be approved. The reason for the requested approval is set forth in the Superintendent's letter, as follows[3]:

> "This property was purchased for Punskee Field on Carney-Lacher form of deed in June, 1925. For authority for the purchase see your file L-P FCT 37428-25. The restricting clause in the deed conveying title to Punskee Field will not be effective after April 26, 1931.
>
> "We are fearful that after the property becomes unrestricted it might be disposed of to the disadvantage of Punskee Field."

On January 20, 1931, the Commissioner of Indian Affairs transmitted this deed to the Secretary of the Interior with recommendations that it be approved. In the letter of transmittal it is said[4]:

> "This property was purchased for Mr. Field upon a Carney-Lacher form of deed in 1925. The restrictive clause in the deed conveying the property to Mr. Field will not be effective after April 26, 1931."

The Commissioner's letter of transmittal discloses that the deed so executed by Punskee Field was approved January 22, 1931, by Jos. M. Dixon, First Assistant Secretary of the Interior.

---

(3) A certified copy of this letter is tendered to the Clerk herewith. It is set forth in full in Appendix C, at page 10 hereof.

(4) A certified copy of this letter is tendered to the Clerk herewith. It is set forth in full in Appendix D, at page 11 hereof.

Also typical is a conveyance made by Wosey John Deere, a full-blood Creek Indian, who conveyed three tracts of land, which had been purchased in her behalf upon a Carney-Lacher form of deed, to her three children, upon a form of deed which restrained the children from alienating or encumbering the land, without limitation as to time, without consent of the Secretary of the Interior.(5)

The Superintendent of the Five Civilized Tribes transmitted this deed to the Commissioner of Indian Affairs on March 18, 1931, with recommendations that it be approved. In the letter of transmittal it is said:(6)

> "The above property was purchased for Wosey John, now Deere, through this office on the Carney-Lacher form of deed, and the restrictive clause expires at the close of April 26, 1931."

The Commissioner of Indian Affairs transmitted this deed to the Secretary of the Interior on March 30, 1931, with recommendations that it be approved. In his letter of transmittal it is said:(7)

> "The property involved was purchased for Wosey John Deere through our Agency at Muskogee, Oklahoma, and conveyance was taken to her upon Carney-Lacher form of deed. The restrictive period expires April 26, 1931."

The Commissioner's letter transmitting this deed to the Secretary of the Interior shows that it was approved on

---

(5) These lands were involved in Board of County Commissioners of Creek County v. Seber, 318 U. S. 705, 63 S. Ct. 920, 87 L. ed. 807. They were also involved in Oklahoma Tax Commission v. United States, 319 U. S. 598, 63 S. Ct. 1284, 87 L. ed. 1233.

(6) A certified copy of this letter is tendered to the Clerk herewith. It is set forth in full in Appendix E, at page 11 hereof.

(7) A certified copy of this letter is tendered to the Clerk herewith. It is set forth in full in Appendix F, at page 12 hereof.

April 3, 1931, by Jos. M. Dixon, First Assistant Secretary of the Interior.

The administrative interpretation of the involved statute, which is shown by the records in the office of the Superintendent of the Five Civilized Tribes, is entitled to great weight, and should not be overturned unless clearly wrong, or a different construction is plainly required. *Blanset* v. *Carden*, 256 U. S. 319, 326, 41 S. Ct. 519, 65 L. ed. 950. This interpretation of the act was overlooked by the court below.

Petitioner respectfully says that these records were not available to her, or her counsel, at the time of the preparation and filing of her petition in this cause; and that neither petitioner, nor her counsel, were able to inspect the public records in the office of the Superintendent of the Five Civilized Tribes for the purpose of ascertaining the existence of documents which might show such a construction of the involved statute.

In this connection, petitioner says that under date of February 8, 1944, the Honorable Secretary of the Interior issued Order No. 1918 which, in effect, forbids the officers and employees in the Indian Service from giving any information or permitting the inspection of books, records, or files where the evidence which might be obtained therefrom is to be used in any judicial or administrative proceeding in which the Government is interested, where such evidence might be prejudicial to the interests of the Government.*(8)*

That after the entry of the judgment in this cause, denying the petition for a writ of *certiorari*, one of petitioner's counsel, who was in Washington, made a request of the Secretary of the Interior for permission to examine the public

---

(8) Order No. 1918 is set forth in full in Appendix G, at pages 13 to 15 hereof.

records in the Indian Agency at Muskogee, Oklahoma, for the purpose of determining whether or not records or documents existed which might show an administrative construction of the involved statute; and that on May 6, 1944, pursuant to such request, a letter was written by the Secretary of the Interior to the Superintendent of the Five Civilized Tribes, authorizing petitioner's counsel to examine the public records in such office for such purpose;(9) that said letter was received by the Superintendent of the Five Civilized Tribes on May 8, 1944, and petitioner's counsel thereupon made an inspection of such records and located the documents which are here offered in support of this petition for rehearing.

Your petitioner, therefore, asserts that the decision below is in conflict with the administrative interpretation of the involved enactment, and is in conflict with the applicable decisions of this Honorable Court, as is shown by our petition herein.

Wherefore, petitioner most respectfully prays that a rehearing be granted in this cause and that her petition for a writ of *certiorari* be granted, and that the writ issue.

Respectfully submitted,

W. F. Semple,
Tulsa, Oklahoma,
George H. Jennings,
Sapulpa, Oklahoma,
Counsel for Petitioner.

---

(9) This letter is set forth in full in Appendix H, at page 16 hereof.